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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

GABRIEL CHAVEZ, MARY ENGLER-)	Case No.: 3:22-cv-06119-WHA
CONTRERAS, RHIANNON DOYLE,)	
SUSAN RICHARDSON, JONATHAN)	AMENDED COMPLAINT FOR
CASTANEDA, JAMES GILHEANY,)	DAMAGES, DECLARATORY AND
PHI LE, GEMA ESPINOZA-CARR,)	INJUNCTIVE RELIEF
AVIN CURRY, PERRY GRIFFIS,)	
ANTONIO GONZALEZ, FRANK)	CLASS ACTION
KITZMILLER, TONYA LEWIS-)	
WILLIAMS, CLIFTON HARRISON,)	
ANA CRUZ LEVI, CHRISTOPHER)	
MONACO, SEAMUS WILSON, on)	
behalf of themselves and all other similarly)	
situated persons,)	
)	
Plaintiffs,)	
)	
v.)	
)	
SAN FRANCISCO BAY AREA RAPID)	
TRANSIT DISTRICT, and DOES 1-100,)	
)	
Defendants.)	

INTRODUCTION

1
2 1. This is a complaint for employment discrimination brought as a class
3 action by employees holding religious convictions against the SARS-CoV-2 (COVID-
4 19) vaccine. Two hundred and four (204) employees requested medical or religious
5 exemptions from their employer, San Francisco Bay Area Rapid Transit District
6 (BART), from COVID-19 vaccination. One in three employees requesting medical
7 exemptions were granted an accommodation. Of the 179 religious objector
8 employees, not one received an accommodation. Exclusion of religious people from
9 the enjoyment of a right stands in violation of the First Amendment's religion clauses
10 and federal and state anti-discrimination in employment laws.

JURISDICTION AND VENUE

11
12 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331,
13 as it arises under the U.S. Constitution and laws of the United States. This action
14 presents a federal question, pursuant to 28 U.S.C. § 1343(a)(3)-(4). The Court also has
15 jurisdiction under 42 U.S.C. § 2000-e5(f)(3). Venue is proper within this judicial
16 district and division, pursuant to 28 U.S.C. § 1391(b), because the relevant events have
17 occurred and are threatened to occur in this jurisdictional district and division. The
18 Defendant's principal place of business is in this district.

19 3. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28
20 U.S.C. §§ 2201-02, Federal Rules of Civil Procedure 57 and 65, and the general legal
21 and equitable powers of this Court, which empower this Court to grant the requested
22 relief.

PARTIES

Plaintiffs

23
24
25 4. Plaintiff, GABRIEL CHAVEZ, was employed by BART as a Building
26 Worker. CHAVEZ has sincerely held religious beliefs that prevent him from
27 receiving the COVID-19 vaccine without violating his faith. CHAVEZ submitted a
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1 written request for a religious accommodation under Title VII and the California Fair
2 Employment and Housing Act (FEHA). CHAVEZ utilized BART'S form entitled
3 *Employee Request for Religious Exemption (COVID-19 Vaccination)*. A true and correct
4 copy of his request, along with the combined requests of the other Plaintiffs,
5 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 1. His
6 beliefs are sincerely held. BART granted the exemption, but in a letter dated
7 December 22, 2021, BART denied the request for a religious accommodation. A true
8 and correct copy of the denial letter, along with the combined denials of the other
9 Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
10 Exhibit 2. CHAVEZ declined to be vaccinated and was thus fired. CHAVEZ has
11 exhausted administrative remedies and has received a notice of right to sue from the
12 Equal Employment Opportunity Commission (EEOC). A true and correct copy of
13 the EEOC notice, along with those of the other Plaintiffs, accompanies this
14 Complaint, is incorporated in full, and is marked as Exhibit 3. CHAVEZ sues on
15 behalf of himself and on behalf of others similarly situated. CHAVEZ is the Plaintiff
16 Class representative.

17 5. Plaintiff, MARY ENGLER-CONTRERAS, was employed by BART as a
18 Senior Operations Supervisor Liaison. ENGLER-CONTRERAS has sincerely held
19 religious beliefs that prevent her from receiving the COVID-19 vaccine without
20 violating her faith. ENGLER-CONTRERAS submitted a written request for a
21 religious accommodation under Title VII and FEHA. ENGLER-CONTRERAS
22 utilized BART'S form entitled *Employee Request for Religious Exemption (COVID-19*
23 *Vaccination)*. A true and correct copy of her request, along with the combined requests
24 of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and is
25 marked as Exhibit 1. Her beliefs are sincerely held. BART granted the exemption,
26 but in a letter dated January 5, 2022, BART denied the request for a religious
27 accommodation. A true and correct copy of the denial letter, along with the
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1 combined denials of the other Plaintiffs, accompanies this Complaint, is incorporated
2 in full, and is marked as Exhibit 2. ENGLER-CONTRERAS declined to be
3 vaccinated and was thus fired. ENGLER-CONTRERAS has exhausted
4 administrative remedies and has received a notice of right to sue from the EEOC. A
5 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,
6 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.
7 ENGLER-CONTRERAS sues on behalf of herself and on behalf of others similarly
8 situated. She is the first alternate Plaintiff Class representative.

9 6. Plaintiff, RHIANNON DOYLE, was employed by BART as an
10 Administrative CSO. DOYLE has sincerely held religious beliefs that prevent her
11 from receiving the COVID-19 vaccine without violating her faith. DOYLE
12 submitted a written request for a religious accommodation under Title VII and
13 FEHA. DOYLE utilized BART'S form entitled *Employee Request for Religious Exemption*
14 *(COVID-19 Vaccination)*. A true and correct copy of her request, along with the
15 combined requests of the other Plaintiffs, accompanies this Complaint, is
16 incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held. BART
17 granted the exemption, but in a letter dated December 22, 2021, BART denied the
18 request for a religious accommodation. A true and correct copy of the denial letter,
19 along with the combined denials of the other Plaintiffs, accompanies this Complaint,
20 is incorporated in full, and is marked as Exhibit 2. DOYLE declined to be vaccinated
21 and was thus fired. DOYLE has exhausted administrative remedies and has received
22 a notice of right to sue from the EEOC. A true and correct copy of the EEOC
23 notice, along with those of the other Plaintiffs, accompanies this Complaint, is
24 incorporated in full, and is marked as Exhibit 3. DOYLE sues on behalf of herself
25 and on behalf of others similarly situated. She is the second alternate Plaintiff Class
26 representative.

1 7. Plaintiff, SUSAN RICHARDSON, was employed by BART as a Full
2 Time Station Agent. RICHARDSON has sincerely held religious beliefs that prevent
3 her from receiving the COVID-19 vaccine without violating her faith.
4 RICHARDSON submitted a written request for a religious accommodation under
5 Title VII and FEHA. RICHARDSON utilized BART'S form entitled *Employee Request*
6 *for Religious Exemption (COVID-19 Vaccination)*. A true and correct copy of her request,
7 along with the combined requests of the other Plaintiffs, accompanies this Complaint,
8 is incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held.
9 BART granted the exemption, but in a letter dated December 20, 2021, BART denied
10 the request for a religious accommodation. A true and correct copy of the denial
11 letter, along with the combined denials of the other Plaintiffs, accompanies this
12 Complaint, is incorporated in full, and is marked as Exhibit 2. RICHARDSON
13 declined to be vaccinated and was thus fired. RICHARDSON has exhausted
14 administrative remedies and has received a notice of right to sue from the EEOC. A
15 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,
16 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.
17 RICHARDSON sues on behalf of herself and on behalf of others similarly situated.
18 She is the third alternate Plaintiff Class representative.

19 8. Plaintiff, JONATHAN CASTANEDA, was employed by BART as an
20 AFC Electronics Technician. CASTANEDA, has sincerely held religious beliefs that
21 prevent him from receiving the COVID-19 vaccine without violating his faith.
22 CASTANEDA, submitted a written request for a religious accommodation under
23 Title VII and FEHA. CASTANEDA, utilized BART'S form entitled *Employee Request*
24 *for Religious Exemption (COVID-19 Vaccination)*. A true and correct copy of his request,
25 along with the combined requests of the other Plaintiffs, accompanies this Complaint,
26 is incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held.
27 BART granted the exemption, but in a letter dated December 22, 2021, BART denied
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1 the request for a religious accommodation. A true and correct copy of the denial
2 letter, along with the combined denials of the other Plaintiffs, accompanies this
3 Complaint, is incorporated in full, and is marked as Exhibit 2. CASTANEDA
4 declined to be vaccinated and was forced to resign. CASTANEDA, has exhausted
5 administrative remedies and has received a notice of right to sue from the EEOC. A
6 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,
7 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.
8 CASTANEDA, sues on behalf of himself and on behalf of others similarly situated.
9 He is the fourth alternate Plaintiff Class representative.

10 9. Plaintiff, JAMES GILHEANY, was employed by BART as a Manager of
11 Technology Programs. GILHEANY has sincerely held religious beliefs that prevent
12 him from receiving the COVID-19 vaccine without violating his faith. GILHEANY
13 submitted a written request for a religious accommodation under Title VII and the
14 California Fair Employment and Housing Act (FEHA). GILHEANY utilized
15 BART'S form entitled *Employee Request for Religious Exemption (COVID-19 Vaccination)*.
16 A true and correct copy of his request, along with the combined requests of the other
17 Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
18 Exhibit 1. His beliefs are sincerely held. BART granted the exemption, but in a letter
19 dated January 18, 2022, BART denied the request for a religious accommodation. A
20 true and correct copy of the denial letter, along with the combined denials of the
21 other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
22 Exhibit 2. GILHEANY declined to be vaccinated and was thus fired. GILHEANY
23 has exhausted administrative remedies and has received a notice of right to sue from
24 the Equal Employment Opportunity Commission (EEOC). A true and correct copy
25 of the EEOC notice, along with those of the other Plaintiffs, accompanies this
26 Complaint, is incorporated in full, and is marked as Exhibit 3. GILHEANY sues on
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1 behalf of himself and on behalf of others similarly situated. GILHEANY is the fifth
2 alternate Plaintiff Class representative.

3 10. Plaintiff, PHI LE, was employed by BART as a Community Service
4 Officer. LE has sincerely held religious beliefs that prevent him from receiving the
5 COVID-19 vaccine without violating his faith. LE submitted a written request for a
6 religious accommodation under Title VII and the California Fair Employment and
7 Housing Act (FEHA). LE utilized BART'S form entitled *Employee Request for Religious*
8 *Exemption (COVID-19 Vaccination)*. A true and correct copy of his request, along with
9 the combined requests of the other Plaintiffs, accompanies this Complaint, is
10 incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held. BART
11 granted the exemption, but in a letter dated December 22, 2021, BART denied the
12 request for a religious accommodation. A true and correct copy of the denial letter,
13 along with the combined denials of the other Plaintiffs, accompanies this Complaint,
14 is incorporated in full, and is marked as Exhibit 2. LE declined to be vaccinated and
15 was thus fired. LE has exhausted administrative remedies and has received a notice of
16 right to sue from the Equal Employment Opportunity Commission (EEOC). A true
17 and correct copy of the EEOC notice, along with those of the other Plaintiffs,
18 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3. LE
19 sues on behalf of himself and on behalf of others similarly situated. LE is the sixth
20 alternate Plaintiff Class representative.

21 11. Plaintiff, GEMA ESPINOZA-CARR, was employed by BART as a
22 Station Agent. ESPINOZA-CARR has sincerely held religious beliefs that prevent
23 her from receiving the COVID-19 vaccine without violating her faith. ESPINOZA-
24 CARR submitted a written request for a religious accommodation under Title VII and
25 FEHA. ESPINOZA-CARR utilized BART'S form entitled *Employee Request for*
26 *Religious Exemption (COVID-19 Vaccination)*. A true and correct copy of her request,
27 along with the combined requests of the other Plaintiffs, accompanies this Complaint,
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1 is incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held.
2 BART granted the exemption, but in a letter dated December 8, 2021, BART denied
3 the request for a religious accommodation. A true and correct copy of the denial
4 letter, along with the combined denials of the other Plaintiffs, accompanies this
5 Complaint, is incorporated in full, and is marked as Exhibit 2. ESPINOZA-CARR
6 declined to be vaccinated and was thus fired. ESPINOZA-CARR has exhausted
7 administrative remedies and has received a notice of right to sue from the EEOC. A
8 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,
9 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.
10 ESPINOZA-CARR sues on behalf of herself and on behalf of others similarly
11 situated. She is the seventh alternate Plaintiff Class representative.

12 12. Plaintiff, AVIN CURRY, was employed by BART as a Police Officer.
13 CURRY has sincerely held religious beliefs that prevent him from receiving the
14 COVID-19 vaccine without violating his faith. CURRY submitted a written request
15 for a religious accommodation under Title VII and FEHA. CURRY utilized BART'S
16 form entitled *Employee Request for Religious Exemption (COVID-19 Vaccination)*. A true
17 and correct copy of his request, along with the combined requests of the other
18 Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
19 Exhibit 1. His beliefs are sincerely held. BART granted the exemption, but in a letter
20 dated January 27, 2022, BART denied the request for a religious accommodation. A
21 true and correct copy of the denial letter, along with the combined denials of the
22 other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
23 Exhibit 2. CURRY declined to be vaccinated and was forced into early retirement a
24 day before being fired. CURRY has exhausted administrative remedies and has
25 received a notice of right to sue from the EEOC. A true and correct copy of the
26 EEOC notice, along with those of the other Plaintiffs, accompanies this Complaint, is
27 incorporated in full, and is marked as Exhibit 3. CURRY sues on behalf of himself

1 and on behalf of others similarly situated. He is the eighth alternate Plaintiff Class
2 representative.

3 13. Plaintiff, PERRY GRIFFIS, was employed by BART as an RSS Shop
4 Scheduler. GRIFFIS has sincerely held religious beliefs that prevent him from
5 receiving the COVID-19 vaccine without violating his faith. GRIFFIS submitted a
6 written request for a religious accommodation under Title VII and FEHA. GRIFFIS
7 utilized BART'S form entitled *Employee Request for Religious Exemption (COVID-19*
8 *Vaccination)*. A true and correct copy of his request, along with the combined requests
9 of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and is
10 marked as Exhibit 1. His beliefs are sincerely held. BART granted the exemption,
11 but in a letter dated January 10, 2022, BART denied the request for a religious
12 accommodation. A true and correct copy of the denial letter, along with the
13 combined denials of the other Plaintiffs, accompanies this Complaint, is incorporated
14 in full, and is marked as Exhibit 2. GRIFFIS declined to be vaccinated and was
15 forced into early retirement a day before being fired. GRIFFIS has exhausted
16 administrative remedies and has received a notice of right to sue from the EEOC. A
17 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,
18 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.
19 GRIFFIS sues on behalf of himself and on behalf of others similarly situated.

20 14. Plaintiff, ANTONIO GONZALEZ, was employed by BART as a
21 Quality Team Leader. GONZALEZ has sincerely held religious beliefs that prevent
22 him from receiving the COVID-19 vaccine without violating his faith. GONZALEZ
23 submitted a written request for a religious accommodation under Title VII and
24 FEHA. GONZALEZ utilized BART'S form entitled *Employee Request for Religious*
25 *Exemption (COVID-19 Vaccination)*. A true and correct copy of his request, along with
26 the combined requests of the other Plaintiffs, accompanies this Complaint, is
27 incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held. BART
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1 granted the exemption, but in a letter dated December 15, 2021, BART denied the
2 request for a religious accommodation. A true and correct copy of the denial letter,
3 along with the combined denials of the other Plaintiffs, accompanies this Complaint,
4 is incorporated in full, and is marked as Exhibit 2. GONZALEZ declined to be
5 vaccinated and was forced into early retirement a day before being fired.
6 GONZALEZ has exhausted administrative remedies and has received a notice of
7 right to sue from the EEOC. A true and correct copy of the EEOC notice, along
8 with those of the other Plaintiffs, accompanies this Complaint, is incorporated in full,
9 and is marked as Exhibit 3. GONZALEZ sues on behalf of himself and on behalf of
10 others similarly situated.

11 15. Plaintiff, FRANK KITZMILLER, was employed by BART as a Train
12 Operator. KITZMILLER has sincerely held religious beliefs that prevent him from
13 receiving the COVID-19 vaccine without violating his faith. KITZMILLER
14 submitted a written request for a religious accommodation under Title VII and
15 FEHA. KITZMILLER utilized BART'S form entitled *Employee Request for Religious*
16 *Exemption (COVID-19 Vaccination)*. A true and correct copy of his request, along with
17 the combined requests of the other Plaintiffs, accompanies this Complaint, is
18 incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held. BART
19 granted the exemption, but in a letter dated January 3, 2022, BART denied the request
20 for a religious accommodation. A true and correct copy of the denial letter, along
21 with the combined denials of the other Plaintiffs, accompanies this Complaint, is
22 incorporated in full, and is marked as Exhibit 2. KITZMILLER declined to be
23 vaccinated and was forced into early retirement a day before being fired.
24 KITZMILLER has exhausted administrative remedies and has received a notice of
25 right to sue from the EEOC. A true and correct copy of the EEOC notice, along
26 with those of the other Plaintiffs, accompanies this Complaint, is incorporated in full,
27

1 and is marked as Exhibit 3. KITZMILLER sues on behalf of himself and on behalf
2 of others similarly situated.

3 16. Plaintiff, TONYA LEWIS-WILLIAMS, was employed by BART as a
4 Utility Worker. WILLIAMS has sincerely held religious beliefs that prevent her from
5 receiving the COVID-19 vaccine without violating her faith. WILLIAMS submitted a
6 written request for a religious accommodation under Title VII and FEHA.
7 WILLIAMS utilized BART'S form entitled *Employee Request for Religious Exemption*
8 *(COVID-19 Vaccination)*. A true and correct copy of her request, along with the
9 combined requests of the other Plaintiffs, accompanies this Complaint, is
10 incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held. BART
11 granted the exemption, but in a letter dated December 20, 2021, BART denied the
12 request for a religious accommodation. A true and correct copy of the denial letter,
13 along with the combined denials of the other Plaintiffs, accompanies this Complaint,
14 is incorporated in full, and is marked as Exhibit 2. WILLIAMS declined to be
15 vaccinated and was forced into early retirement a day before being fired. WILLIAMS
16 has exhausted administrative remedies and has received a notice of right to sue from
17 the EEOC. A true and correct copy of the EEOC notice, along with those of the
18 other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
19 Exhibit 3. WILLIAMS sues on behalf of herself and on behalf of others similarly
20 situated.

21 17. Plaintiff, CLIFTON HARRISON, was employed by BART as a Station
22 Agent. HARRISON has sincerely held religious beliefs that prevent him from
23 receiving the COVID-19 vaccine without violating his faith. HARRISON submitted
24 a written request for a religious accommodation under Title VII and FEHA.
25 HARRISON utilized BART'S form entitled *Employee Request for Religious Exemption*
26 *(COVID-19 Vaccination)*. A true and correct copy of his request, along with the
27 combined requests of the other Plaintiffs, accompanies this Complaint, is
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1 incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held. BART
2 granted the exemption, but in a letter dated December 20, 2021, BART denied the
3 request for a religious accommodation. A true and correct copy of the denial letter,
4 along with the combined denials of the other Plaintiffs, accompanies this Complaint,
5 is incorporated in full, and is marked as Exhibit 2. HARRISON declined to be
6 vaccinated and was forced into early retirement a day before being fired.
7 HARRISON has exhausted administrative remedies and has received a notice of right
8 to sue from the EEOC. A true and correct copy of the EEOC notice, along with
9 those of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and
10 is marked as Exhibit 3. HARRISON sues on behalf of himself and on behalf of
11 others similarly situated.

12 18. Plaintiff, ANA CRUZ LEVI, was employed by BART as an Intermediate
13 Clerk, Personnel Analyst and Recruiter. LEVI has sincerely held religious beliefs that
14 prevent her from receiving the COVID-19 vaccine without violating her faith. LEVI
15 submitted a written request for a religious accommodation under Title VII and
16 FEHA. LEVI utilized BART'S form entitled *Employee Request for Religious Exemption*
17 *(COVID-19 Vaccination)*. A true and correct copy of her request, along with the
18 combined requests of the other Plaintiffs, accompanies this Complaint, is
19 incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held. BART
20 granted the exemption, but in a letter dated January 31, 2022, BART denied the
21 request for a religious accommodation. A true and correct copy of the denial letter,
22 along with the combined denials of the other Plaintiffs, accompanies this Complaint,
23 is incorporated in full, and is marked as Exhibit 2. LEVI declined to be vaccinated
24 and was forced into early retirement a day before being fired. LEVI has exhausted
25 administrative remedies and has received a notice of right to sue from the EEOC. A
26 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,
27

1 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.
2 LEVI sues on behalf of herself and on behalf of others similarly situated.

3 19. Plaintiff, CHRISTOPHER MONACO, was employed by BART as a Fire
4 Protection Worker. MONACO has sincerely held religious beliefs that prevent him
5 from receiving the COVID-19 vaccine without violating his faith. MONACO
6 submitted a written request for a religious accommodation under Title VII and
7 FEHA. MONACO utilized BART'S form entitled *Employee Request for Religious*
8 *Exemption (COVID-19 Vaccination)*. A true and correct copy of his request, along with
9 the combined requests of the other Plaintiffs, accompanies this Complaint, is
10 incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held. BART
11 granted the exemption, but in a letter dated January 7, 2022, BART denied the request
12 for a religious accommodation. A true and correct copy of the denial letter, along
13 with the combined denials of the other Plaintiffs, accompanies this Complaint, is
14 incorporated in full, and is marked as Exhibit 2. MONACO declined to be
15 vaccinated and was forced into early retirement a day before being fired. MONACO
16 has exhausted administrative remedies and has received a notice of right to sue from
17 the EEOC. A true and correct copy of the EEOC notice, along with those of the
18 other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as
19 Exhibit 3. MONACO sues on behalf of himself and on behalf of others similarly
20 situated.

21 20. Plaintiff, SEAMUS WILSON, was employed by BART as a Train
22 Operator. WILSON has sincerely held religious beliefs that prevent him from
23 receiving the COVID-19 vaccine without violating his faith. WILSON submitted a
24 written request for a religious accommodation under Title VII and FEHA. WILSON
25 utilized BART'S form entitled *Employee Request for Religious Exemption (COVID-19*
26 *Vaccination)*. A true and correct copy of his request, along with the combined requests
27 of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and is
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marked as Exhibit 1. His beliefs are sincerely held. BART granted the exemption, but in a letter dated December 22, 2021, BART denied the request for a religious accommodation. A true and correct copy of the denial letter, along with the combined denials of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as Exhibit 2. WILSON declined to be vaccinated and was forced into early retirement a day before being fired. WILSON has exhausted administrative remedies and has received a notice of right to sue from the EEOC. A true and correct copy of the EEOC notice, along with those of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3. WILSON sues on behalf of himself and on behalf of others similarly situated.

Defendants

21. Defendant, SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, was established as a special district in 1957 and is a heavy-rail public transit system that connects the San Francisco Peninsula with communities in the East Bay and South Bay. BART began service in 1972.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1-100, inclusive, are unknown to Plaintiffs at this time, who therefore sues said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is in some way responsible for, or participated in or contributed to, the matters and things complained of herein, and is legally responsible in some manner. Plaintiffs will seek leave to amend this Complaint when the true names, capacities, and responsibilities have been ascertained.

CLASS ACTION ALLEGATIONS

23. Plaintiffs, GABRIEL CHAVEZ, MARY ENGLER-CONTRERAS, RHIANNON DOYLE, SUSAN RICHARDSON, JONATHAN CASTANEDA,

JAMES GILHEANY, PHI LE, GEMA ESPINOZA-CARR and AVIN CURRY (each a Plaintiff and, together, the named Plaintiffs), bring this action for a class of persons defined as follows: All employees presently or previously employed by BART (1) who have been ordered to submit to a COVID-19 vaccination, (2) who have submitted a written request for a religious exemption, and (3) who were not granted a religious accommodation.

24. These persons are collectively referred to as the Plaintiff Class.

25. The proposed Plaintiff Class satisfies the numerosity, commonality, typicality, and adequacy prerequisites for suing as a representative party under FRCP 23:

A. **Numerosity:** The proposed Plaintiff Class is comprised of approximately 179 current or former employees of BART.

B. **Commonality:** There are questions of law and fact common to each member of the proposed Plaintiff Class, to wit:

- (1) Whether the universal denial of accommodations to those submitting requests for a religious exemption to vaccination against COVID-19 was lawful under federal and state employment laws when the employer simultaneously allowed *secular* accommodations for the unvaccinated;
- (2) Whether BART's standardized process of inquiring into the sincerity of the faith of any employee who requests religious accommodation is consistent with federal employment laws, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (Title VII), and state employment laws, including the California Fair Employment and Housing Act, Cal. Gov. Code § 12900, et seq. (FEHA); and

(3) Whether BART's standardized process of inquiring into the sincerity of the faith of any employee who requests religious accommodation is consistent with the religion clauses enumerated in the First Amendment.

C. **Typicality:** The named Plaintiffs' claims are typical of the Plaintiff Class in that (1) all named Plaintiffs hold religious beliefs that compel them not to receive the COVID-19 vaccine; (2) they have claimed sincerity of their religious beliefs; (3) they have submitted written requests for religious accommodation; and (4) their requests have been denied.

D. **Adequacy of Representation:** The named Plaintiffs will fairly and adequately protect the interests of the proposed Plaintiff Class. The interests of the named Plaintiffs do not conflict with the interests of the Plaintiff Class members, and the named Plaintiffs have retained counsel experienced in successful class action litigation and constitutional litigation in order to vigorously prosecute this action on behalf of the Plaintiff Class. The relief sought by the named Plaintiffs will inure to the benefit of the Plaintiff Class generally.

E. The named Plaintiffs raise predominantly common factual and legal questions that can be answered for all Plaintiff Class members through a single class-wide proceeding, which will be a superior method for adjudicating these issues for the Plaintiff Class.

FACTS

26. On October 14, 2021, BART issued a COVID-19 Vaccination Policy requiring all employees to be fully vaccinated as a condition of employment.

27. Per the requirements of state and federal anti-discrimination in employment laws, BART employees were given an opportunity to request either a

1 medical or religious exemption to COVID-19 vaccination. If an exemption was
2 granted, then BART determined whether to provide a reasonable accommodation.

3 28. Between October 14, 2021, and February 16, 2022, 204 BART employees
4 requested either religious or medical exemptions to COVID-19 vaccination. A true
5 and correct copy of the table showing the number of employees seeking exemptions
6 and the results of said requests accompanies this Complaint, is incorporated in full, and
7 is marked as Exhibit 4.

8 29. Of those, 25 employees requested medical exemptions to COVID-19
9 vaccination. None or 1 in 3—employees requesting a medical exemption were given
10 an accommodation by BART. *See* Exhibit 4.

11 30. Approximately 179 employees submitted requests to be exempted from
12 COVID-19 vaccination due to their sincerely held religious beliefs. Seventy of these
13 employees were granted a religious **exemption**. However, 109 employees' requests for
14 religious exemption were denied. *Id.*

15 31. Of the 70 remaining employees granted a religious exemption, not one
16 employee with faith-based convictions against COVID-19 vaccination was given a
17 religious **accommodation**. No matter what any religious employee suggested as an
18 accommodation, it was never good enough.

19 32. The named Plaintiffs and the individual members of the Plaintiff Class
20 have each submitted a written request for a religious accommodation in order to be
21 exempted from COVID-19 vaccination. Like the rest of the Plaintiff Class, they
22 affirmatively assert that their religious convictions against taking the COVID-19
23 vaccination are sincerely held.

24 33. Generally, an employer should proceed on the assumption that a request
25 for religious accommodation is based on sincerely held religious beliefs, practices, or
26 observances. BART has turned this standard on its head. Instead, BART instituted a
27

1 detailed probe into the sincerity of the faith of its employees in which 61 percent
2 received a failing grade.

3 34. BART utilized an interviewer question template entitled *Religious*
4 *Exemption Interviews (Question Template)*. A true and correct copy of the *Question Template*
5 accompanies this Complaint and is incorporated in full and marked as Exhibit 5.

6 35. The *Question Template* began with four boxes for the interviewer which
7 appeared as follows:

8 EEOC factors:

9 ☐ The reasons cited in support of the request were primarily for
10 secular/non-religious reasons.

11 ☐ A clear nexus between the request and the stated religious
12 beliefs was not established.

13 ☐ Evidence of behaviors inconsistent with adherence to the
14 stated beliefs exists.

15 ☐ The timing of your request as it relates to adoption of the
16 stated beliefs. *Id.*

17 36. The interviewer then asks the employee five questions:

18 1. Can you just tell us briefly about your sincerely held belief?

19 2. Can you tell us in your own words why taking COVID-19
20 vaccine is contrary to your religious belief?

21 3. What do you think will happen to you if you take the COVID-
22 19 vaccine?

23 4. Can you provide us other examples of how this religious belief
24 is demonstrated in other aspects of your life?

25 5. You refuse to take the COVID-19 vaccine because of the
26 alleged use of aborted fetal cells in the creation of the vaccine.
27 Research on this topic has revealed some cosmetic and over-
28 the-counter medicines may use the same process as the
COVID-19 vaccine. Are you aware of this? Tell me how else
you demonstrate the same pre-cautions in your life. *Id.*

37. The third question, which asks, “What do you think will happen to you if
you take the COVID-19 vaccine,” is, charitably, ambiguous at best and possibly
calculated to mislead the employee. Does this interrogatory seek to elicit an answer

1 based in doctrine or theology? By way of examples, “I will have a guilty conscience.”
 2 “I will be committing a sin.” “I will deny my faith.” “I will spend eternity in hell.”
 3 On the other hand, is the question seeking a social, emotional, or physical response?
 4 Consider these examples. “My wife will divorce me as a coward without principle.”
 5 “I’ll lose my bodily autonomy.” “I’ll get sick or die.” The employee has little or no
 6 idea which direction will lead to a denial or approval.

7 38. The protocol and standardized forms used by HR evaluators comprise a
 8 detailed, individualized assessment, giving broad discretion to an evaluator.

9 39. The evaluators use a document entitled RELIGIOUS REQUEST
 10 REVIEW FORM (COVID-19 Vaccination). A true and correct copy of the
 11 RELIGIOUS REQUEST REVIEW FORM (COVID-19 Vaccination) accompanies
 12 this Complaint and is incorporated in full and marked as Exhibit 6. The form has
 13 evaluators engage in an individualized assessment in which they ask the following
 14 questions:

- 15
- 16 • “Is there evidence that the employee has acted in a way that is inconsistent with
the claimed belief.”
- 17 • “Is there evidence the employee is seeking a benefit or an exception that is
18 likely to be sought for nonreligious reasons?”
- 19 • “Is the timing of the request considered questionable?”
- 20 • “Is there evidence the employee may be seeking the benefit for secular
reasons?”

21

22 40. After denying every request for an accommodation coming from a
 23 religious objector to the vaccination, BART gave these employees an ultimatum:

- 24 • Comply with the vaccination mandate;
- 25 • Retire if qualified;
- 26 • Resign;
- 27 • Do nothing and be terminated. *See* Exhibit 2.

41. The ultimatum required the Plaintiff Class to choose between their employment and their faith. Unless an employee was vaccinated, the employee was either forced into early retirement, constructively discharged by forced resignation, or simply terminated.

Centers for Disease Control Statements

42. In a published statement, the federal Centers for Disease Control and Prevention (CDC) stated that the Delta variant resulted in similarly high COVID-19 viral loads in vaccinated and unvaccinated people.¹ CDC Director Rochelle Walensky has confirmed that COVID-19-positive individuals carry the same “viral load” (equivalent to the risk of spreading infection) whether they are vaccinated or unvaccinated.²

43. The CDC Director’s statement was based on a study in the summer of 2021 which tested vaccinated and unvaccinated persons and found that “[c]ycle threshold values [COVID-19 viral loads] were similar among specimens from patients who were fully vaccinated and those who were not.”³

44. Later studies have found that the viral load associated with COVID-19 variants such as Omicron also does not vary based upon vaccination status: “[F]ully vaccinated individuals with breakthrough infections have peak viral load similar to

¹ Statement from CDC Director Rochelle P. Walensky issued on July 30, 2021, <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html>.

² *Id.*

³ “Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021,” *Morbidity and Mortality Weekly Report, CDC* (July 30, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w.

1 unvaccinated cases and can efficiently transmit infection in household settings,
2 including to fully vaccinated contacts.”⁴

3 45. In another official statement, the CDC has confirmed those studies and
4 stated that it expects that anyone with an Omicron infection, regardless of vaccination
5 status or whether or not they have symptoms, can spread the virus to others.⁵

6 46. Because the viral loads are no different for the vaccinated and the
7 unvaccinated, BART’s position that the unvaccinated pose a danger to themselves,
8 coworkers, and the public, but that the vaccinated do not pose this danger, is not
9 consistent with the above-cited statements from the CDC.

10 47. The CDC spokesperson, Greta Massetti, stated that immunity for the
11 population is now around 95 percent when combining those who have contracted and
12 recovered from COVID-19 with those that have been vaccinated. As such, “it makes
13 the most sense not to differentiate” between the vaccinated and unvaccinated.⁶

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION**

16 **Violation of Title VII of the Civil Rights Act of 1964**

17 All Plaintiffs Against All Government Defendants

18 (42 U.S.C. § 2000e)

19 48. Plaintiffs repeat and reallege the allegations above and incorporate those
20 allegations herein by reference.

21
22 ⁴ David W. Eyre, B.M., B.Ch., D.Phil. et al., *Effect of Covid-19 Vaccination on*
23 *Transmission of Alpha and Delta Variants*, New England J. Med 386:744-756 (February
24 24, 2022), <https://www.nejm.org/doi/full/10.1056/NEJMoa2116597>.

25 ⁵ “Omicron Variant: What You Need to Know,” CDC (March 29, 2022),
26 <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

27 ⁶ “With new guidance, CDC ends test-to-stay for schools and relaxes COVID rules”
28 NPR (Aug. 11, 2022), <https://www.npr.org/sections/health-shots/2022/08/11/1116991600/with-new-guidance-cdc-ends-test-to-stay-for-schools-and-relaxes-covid-rules>.

1 49. At all times relevant hereto, Title VII was in full force and effect and was
2 binding on BART.

3 50. At all times relevant hereto, the Plaintiffs were performing competently
4 in the positions they held as employees of BART.

5 51. Plaintiffs have bona fide religious beliefs that conflict with receiving the
6 COVID-19 vaccination; they have informed their employer of such beliefs. The
7 Plaintiffs were disciplined for failure to comply with the conflicting employment
8 requirement.

9 52. Title VII makes it an unlawful employment practice to fail or refuse to
10 reasonably accommodate the religious beliefs and practices of an employee.

11 53. BART failed to provide reasonable alternative means of accommodating
12 the religious belief or observance that was in conflict with the COVID-19 vaccination
13 work requirement.

14 54. BART granted medical accommodations to vaccination but not a single
15 religious accommodation. Stated otherwise, religious persons as a class were excluded
16 from accommodation.

17 55. An unvaccinated employee exempted for medical reasons poses precisely
18 the same threat as an unvaccinated employee exempted for religious reasons.

19 56. There is a dispute between the Plaintiffs and Defendant. BART asserts
20 that it can undertake a detailed probe of the sincerity of the religious beliefs of its
21 employees; this includes placing a burden on the Plaintiff Class to provide an objective
22 basis for religious convictions regarding the refusal to take the COVID-19 vaccination.
23 Plaintiffs disagree. Because faith is intrinsically subjective, a religious objector cannot
24 be held to an objective measure of proof regarding what lay within his or her heart,
25 mind, and soul. Belief in what one may demonstrate to the senses is not faith.
26 Plaintiffs assert that Title VII presumes sincerity of belief by an employee, and
27 therefore BART's standardized practice of a rigorous inquisition is an unlawful
28

1 standard. The Plaintiffs' legal position is that, although an employee's faith may be
 2 deemed as heresy to some and incomprehensible to others, employers cannot require
 3 orthodoxy of employees according to a recognized religion or demand that employees
 4 be put to the proof of their religious beliefs.

5 **SECOND CAUSE OF ACTION**

6 **RELIGION CLAUSES**

7 **First Amendment to the U.S. Constitution**

8 All Plaintiffs Against All Government Defendants
 (42 U.S.C. § 1983)

9 57. The Plaintiffs repeat and reallege the allegations above and incorporate
 10 those allegations herein by reference.

11 58. The right to free exercise of religion is a right protected and guaranteed
 12 by the First Amendment of the U.S. Constitution. The liberties under the First
 13 Amendment apply to the states and their political subdivisions through the Fourteenth
 14 Amendment.

15 59. The actions of BART have been, and continue to be, done under color of
 16 law.

17 60. The Plaintiffs have sincerely held religious beliefs that compel them to
 18 refuse the COVID-19 vaccine.

19 61. There are two ways that BART has violated the religious clauses. These
 20 are through the evaluation process which looks for heretics or hypocrites. The second
 21 is by totally excluding religious people from a statutory accommodation to a condition
 22 required for employment.

23 *Total Exclusion of Religious Employees*

24 62. BART provided accommodations for approximately 33 percent of its
 25 employees who sought an exemption to vaccination due to medical reasons. In
 26 contrast, BART provided accommodations for 0 percent of its employees who sought
 27 an exemption to vaccination due to religious beliefs.

63. The exclusion of employees from a statutory accommodation deprives them of a right because of their status as people of faith.

64. One third of employees requesting a medical exemption from vaccination received an accommodation, though such an unvaccinated employee poses the same health risk as an unvaccinated religious employee.

Heretics and Hypocrites

65. The protocol that BART evaluators use imposes requirements that stand as hostile to the religious beliefs of the Plaintiff Class and acts in a manner that passes judgment upon, or presupposes the illegitimacy of, religious beliefs and practices. Therefore, the protocol used is not neutral.

66. BART's detailed probe into the beliefs of the Plaintiff Class exceeds sincerity by determining orthodoxy, verity of beliefs, and hypocrisy.

67. BART's evaluators are taking on the role that the First Amendment reserves to ecclesiastical courts, not government officials.

68. There is a dispute between the Plaintiffs and Defendant. BART asserts that it can undertake a detailed probe of the sincerity of the religious beliefs of its employees; this includes placing a burden on the Plaintiff Class to provide an objective basis for religious convictions regarding the refusal to take the COVID-19 vaccination. Plaintiffs disagree. Because faith is intrinsically subjective, a religious objector cannot be held to an objective measure of proof regarding what lay within his or her heart, mind, and soul. Belief in what one may demonstrate to the senses is not faith. The Plaintiffs' legal position is that, although an employee's faith may be deemed as heresy to some and incomprehensible to others, employers cannot require orthodoxy of employees according to a recognized religion or demand that employees be put to the proof of their religious beliefs.

69. BART provided accommodations for approximately 33 percent of its employees who sought an exemption to vaccination due to medical reasons. In

1 contrast, BART provided accommodations for 0 percent of its employees who sought
2 an exemption to vaccination due to religious beliefs.

3 70. The protocol that evaluators of employees seeking a religious exemption
4 constitutes individualized assessments, giving broad discretion to an evaluator, and
5 thus are not neutral and generally applicable.

6 71. The vaccination requirement forces the Plaintiff Class to choose between
7 receiving the COVID-19 vaccine in violation of their sincerely held religious beliefs or
8 being fired, forced into retirement, or constructively discharged by pressuring them to
9 resign.

10 72. The conduct of BART thus imposes a substantial burden on the Plaintiffs
11 and the Plaintiff Class and interferes with, and deprives them of, the enjoyment of the
12 religious liberties guaranteed by the First Amendment to the U.S. Constitution, as
13 made applicable to the states through the Fourteenth Amendment.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION** 16 **Violation of the California Fair Employment and Housing Act**

17 All Plaintiffs Against All Government Defendants
18 (Gov. Code § 12900 et seq.)

19 73. The Plaintiffs repeat and reallege the allegations above and incorporate
20 those allegations herein by reference.

21 74. At all times relevant hereto, FEHA was in full force and effect and was
22 binding on BART.

23 75. BART failed to provide reasonable alternative means of accommodating
24 the religious belief or observance that conflicted with the work requirement, i.e.,
25 COVID-19 vaccination.

26 76. Accommodating the Plaintiffs does not pose a *significant difficulty or expense*
27 on BART per Gov. Code § 12926(u).

77. Plaintiffs are entitled to further relief as more fully set forth below in their Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor, and against the Defendant, for full relief, including the following:

a. Declaratory judgment that BART's protocol for determining sincerity of faith in whole, or in part, on its face, and as applied, does not comport with the requirements of Title VII;

b. Declaratory judgment that BART's protocol for determining sincerity of faith in whole, or in part, on its face, and as applied, does not comport with the requirements of FEHA;

c. Declaratory judgment that BART's protocol for determining sincerity of faith is in whole, or in part, on its face, and as applied, is violative of the religion clauses of the First Amendment;

d. Declaratory judgment that BART's protocol individualized assessment for both religious exemptions and accommodation is in whole, or in part, on its face, and as applied, violative of the religion clauses of the First Amendment;

e. Declaratory judgment that BART's decision not to grant any religious accommodations is violative of the religion clauses of the First Amendment;

f. Declaratory judgment that providing a religious accommodation does not impose an undue hardship on BART under Title VII;

g. Declaratory judgment that providing a religious accommodation does not impose a significant difficulty or expense on BART under FEHA;

h. A preliminary and permanent injunction prohibiting BART's protocol for determining sincerity of faith;

1 i. Equitable relief in the form of an order setting aside the denials for
2 accommodation and that the Plaintiff Class receive *de novo* consideration of their
3 accommodation requests;

4 j. An award for actual, consequential, and incidental financial losses,
5 including, but not limited to lost back pay, front pay, benefits, lost overtime, and other
6 compensation plus interest;

7 k. An award of compensatory damages;

8 l. Restoration of employee benefits, including, but not limited to, medical
9 benefits, pensions, and insurance;

10 m. Restore vacation days, comp hours, and lost time hours;

11 n. Attorneys' fees and costs; and

12 o. Any and all other appropriate relief to which the Plaintiffs may be entitled
13 including all "appropriate relief" within the scope of FRCP 54(c).

14 Dated: May 22, 2023

15 /s/ Kevin T. Snider

16 Kevin T. Snider

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